

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/09/2002

CORAM

THE HONOURABLE MR. JUSTICE V.KANAGARAJ

WRIT PETITION NO.24760 of 2002

AND

W.P.M.P.NOs.34038 & 34039 OF 2002.

S.Madhuri ... Petitioner

-Vs-

1. State Level Scrutiny Committee
rep. by its Chairman and
Secretary to Government,
Adi Dravidar and Tribal Welfare
Department,
Secretariat, Chennai-9.

2. District Vigilance Committee
rep. by its Chairman and District
Collector, Vellore, Vellore District.

3. Tamilnadu Dr.M.G.R. Medical
University rep. by its
Vice Chancellor, Chennai-25.

4. The Director of Medical Education,
Chennai-10.

5. Dean, Stanley Medical College,
Chennai-1. ... Respondents

Writ Petition filed under Article 226 of the Constitution of
India praying to issue a Writ of Certiorari, as stated therein.

For petitioner : Mr.C.Selvaraju

For respondents: Mr.S.Venkatesh, AGP.

:O R D E R

Mr.S.Venkatesh, learned Additional Government Pleader, takes
notice for the respondents.

2. Writ Petition praying to issue a Writ of Certiorari calling for the records pertaining to the order passed by the first respondent in his Proceedings No.6120/Athi. Na.2/2000 dated 10.6.2002 confirming the order of the second respondent in his Proceedings No.K.5/48878/99 dated 10.11.1999 and quash the same.

3. In the affidavit filed in support of the writ petition, the petitioner would submit that she belongs to Adi Dravidar Community and her forefathers got converted to Christianity; that when her mother died, her family decided to re-convert to Hinduism and they became Hindus by conversion, following the procedures; that her father Savarimuthu became Sundar, her sister Hema Naveernarani became Kavitha and the petitioner Merilin Perishaba became Madhuri, after conversion to Hinduism, to which they belong now.

4. The further case of the petitioner is that she applied for the Community Certificate after re-conversion and the same had been issued as scheduled Caste as on 19.6.1998; that she applied for the admission of M.B.B.S. Course and while doing M.B.B.S. Course in the fifth respondent's college, those who were ill-disposed with the family of the petitioner filed W.P. No.19319 of 1998 and the authorities concerned enquired the matter, even prior to a finality of a decision is rendered by this Court; that based on the Sub Collector's report, the second respondent, the District Vigilance Committee, sent notice for the appearance of the petitioner and her father; that they produced all the documents in support of their claim, but however, the second respondent passed orders cancelling the Community Certificate issued on 19.6.1998 by their order dated 10.11.1999; that as against the said order, the petitioner filed W.P. No.4240 of 2001, in which since this Court felt that there was an appeal remedy available, she had to withdraw the said writ petition and prefer an appeal before the first respondent Committee; that the said authority, by its order dated 10.6 .2002, passed orders confirming the order of the second respondent, challenging which, the present writ petition has been filed by the petitioner on certain grounds as brought forth in the grounds of writ petition.

5. During arguments, the learned counsel for the petitioner would cite a judgment of the Honourable Apex Court delivered in SUGANTHI SURESH KUMAR vs. JAGDEESHAN reported in AIR 2002 SC 681 wherein it has been held that 'the law declared by the Supreme Court cannot be bypassed by High Court on ground that some point has not been considered'.

6. On the contrary, two judgments would be cited on the part of the respondents, the first one delivered by a Division Bench of this Court in M.PONNAMBALAM vs. THE DISTRICT COLLECTOR, TIRUCHIRAPALLI DISTRICT, TIRUCHIRAPALLI AND 2 OTHERS reported in 2002(1)CTC 264 and the second one is an unreported judgment of a learned single Judge of this Court dated 2.4.2002 made in W.P.Nos.10365 and 10573 of 2002.

7. So far as the first judgment cited above is concerned, it is held therein that "obtaining statements from villagers through discreet

enquiries behind back of employee does not vitiate the enquiry and the principles of natural justice would be satisfied if copies of statements obtained in enquiry is put on notice to employee before final decision is taken. Opportunity given to furnish evidence in support of the fact that he is a member of the particular community and his participation in the enquiry conducted by the Collector and the cancellation of the community certificate is valid."

8. In the second judgment cited above, it is held:

"In the present case, in respect of the District Level Committee, the Supreme Court had not issued any directions and it is for the State Government to issue such administrative orders or instructions in respect of verification of social status claimed by the individuals residing within the District. In respect of the District Level Committee, the Committee has to verify the certificates issued by the Tahsildars and not by the Revenue Divisional Officers. Therefore, in respect of the District Level Committee, the contention advanced that it is not in accordance with the judgment of the Supreme Court cannot be sustained at all. The State Government has in act formed a State Level Committee which is in accordance with the pronouncement of the Apex Court in Madhuri Patil's case as well as the later pronouncement in Director of Tribal Welfare, Govt. of A.P. vs. Laveti Giri."

"The Supreme Court had not indicated or laid down any guideline, nor it has directed formation of District Level Committees to verify the social status certificates issued by the Tahsildars or claims of individuals. The State Government on its own has formed it and it has the power to verify the social status certificates issued at the District Level and such formation of the committees at the District Level need not necessarily be in conformity with the judgment of the Apex Court."

"... In view of the binding decision in W.A.No.1731 of 2000 etc., this Court holds that the G.O., impugned is valid and it is not contrary to the pronouncement of the Apex Court either in Madhuri Patil's case (AIR 1995 SC 94) or in the later pronouncement of the Apex Court in Director of Tribal Welfare vs. Laveti Giri (AIR 1995 SC 1506). The impugned G.O. in no way contravenes the guidelines laid down by the Supreme Court in the two decisions...."

9. So far as the first judgment cited above is concerned, adhering to the facts of the case, the legal proposition held therein is that even though the statements from villagers through discreet enquiries have been obtained behind the back of yee, it does not vitiate the enquiry nor violate the principles of natural justice provided the employee is put on notice of copies of the statements pursuant to which the employee also participated the enquiry proceedings and therefore no impropriety or illegality or inconsistency or lack of opportunity could occur in such cases.

10. The second judgment would surpass the judgments of two single Judges independently delivered in separate cases and would adopt the Division Bench judgment of this Court rendered in W.A.1731 of 2000 etc. dated

3.1.2001 thereby confirming the State Government order stating that it has not only formed the State Level Scrutiny Committee but also formulated the District Level Vigilance Committee to review the social status certificates issued by the Tahsildar of the concerned Districts and that it is only the State Level Scrutiny Committee which would scrutinise or verify the social status certificates issued by the Revenue Divisional Officers.

11. But, however, these are not the points relevant for consideration so far as the case in hand is concerned. But, it is the question of re-conversion to the Hindu-fold from Christianity which the petitioner and her parents are said to have adopted earlier. Therefore, the point that is paramount for determination in the case in hand is 'whether a Hindu Adi-dravida whose forefathers converted to Christianity, after reconversion to Hinduism and started adopting and preaching Hindu faith, would be entitled to the benefits of reservation?'

12. It is the firm case of the petitioner that not only her father who is a Teacher but also herself and her sister got re-converted to Hinduism after the death of her mother, performing "Suddhi" ceremonies by the authorities of Arya Samaj and by changing their names, they adopted the Hindu religion in every walk of life and they were issued with a 'certificate of conversion to Hinduism' by the Arya Samaj Centre, Chennai authorised by its Secretary with his seal and signature denoting that her father P.S.Savarimuthu, her elder sister S.Hema Noveen Arasi and herself by name S.Merlin Pershiba were re-converted to Hinduism and they were respectively named as S.Sunder, S.Kavitha and S.Madhuri. No mention need be necessary that by this re-conversion, the petitioner again gets the status of her traditional community prior to conversion to Christianity i.e. Adi Dravida, which is recognised as one of the Scheduled Caste Communities.

13. After re-conversion to Hindu-fold, as has been done in the manner mentioned above, the petitioner would also cause publication of the same in the Tamil Nadu Government Gazette dated 24.6.1998 wherein it has been clearly mentioned that 'S.Merlin Pershiba (Christian), daughter of Thiru P.S.Savari Muthu, born on 11th March, 1979 (native place Vellore), residing at No.14, 25th East Cross Road, Gandhi Nagar, Vellore-632 006, has reconverted to Hinduism with the name of S. Madhuri on 31st May 1998'. The local Tahsildar also has issued the community certificate in favour of the petitioner to the effect that she belong to the Hindu Adi-dravida community, as per his certificate dated 19.8.1998 issued in his proceeding R.Dis.7892/98. Based on all these vital documents, the petitioner had approached the second respondent/the District Level Vigilance Committee, Vellore District when the question of her community was raised by her educational authorities. But, the District Level Vigilance Committee, Vellore, having gone into all the aspects, had rejected the plea of the petitioner that she belonged to the Adi-dravida community which is recognised as a Scheduled Caste. Thereupon, the petitioner had preferred an appeal to the first respondent/the State Level Scrutiny Committee and the said Committee also having dismissed the plea of the petitioner, the petitioner has come forward to file the above writ petition.

14. A perusal of the orders of the respondents 1 and 2 would

only depict a sorry state of affairs regarding the manner in which they have considered the point, which is relevant for determination. It must be stated that both the said Committees, without properly determining the legal question that is involved in the matter of reconversion of the petitioner to Hinduism, have gone into unnecessary details in order to factually arrive at the conclusion that the reconversion was a hoax without properly establishing the same.

15. On facts, there is no denial regarding the certificates issued by Arya Samaj, the Gazette Publication in the Tamil Nadu Government Gazette dated 24.6.1998 and the certificate issued by the Tahsildar to the effect that the petitioner is a Hindu Ad-dravidar which is a Scheduled Caste community which unshakably establish the reconversion of the petitioner. It is not the case of either the District Level Vigilance Committee or the State Level Scrutiny committee that these certificates and publication are either false or unacceptable. So long as the above three vital documents are not shattered, based on facts either attributing the reason that they are bogus or fraudulently obtained, these three vital documents serve as vital documentary evidence relevant for consideration regarding the re-conversion of the petitioner to Hinduism from Christianity and hence the appreciation of these vital documentary evidence by the both District Level and State Level Committees become liable to be dismissed as perverse.

16. Then, the only question that would arise for determination is "whether, in law, if a person gets himself or herself re-converted to Hinduism, in the manner that the petitioner has done, such conversion is permissible and whether the benefit of reservation would be available for such persons?" This being the question of law, it should have been determined either by the District Level Vigilance Committee or the State Level Scrutiny Committee, which they have failed to go into. A recent judgment of the Division Bench of this Court delivered in N.S.ZIAUDEEN vs. S.ASHOK KUMAR, PRINCIPAL SESSIONS JUDGE, CHENNAI AND OTHERS reported in (2002)2 M.L.J. 74 has laid down that 'there is no bar for a non-Hindu to convert to Hinduism, if the other members of the caste accept and admit within the fold and the convert professing Hinduism in all respects. Such conversion is permissible and the benefit of reservation is available.'

17. In view of the admitted fact that the petitioner was born to Christian parents and her parents also were converted to Christianity prior to her birth and after the death of her mother, the petitioner's father, her elder sister and herself got re-converted to Hinduism which is beyond question and it is proved in an authoritative manner not only causing production of the certificate issued by the Arya Samaj for the "Suddhi" ceremonies having been perfectly gone through, the gazette publication effected in the Tamil Nadu Government Gazette and the very certificate issued by the local Tahsildar on verification to the effect that the petitioner is a Hindu Adi-dravidar and under these circumstances, as held in the above Division Bench judgment of this Court, there is no doubt that the petitioner is entitled to the benefit of reservation as a member of the Adi Dravida Community which is recognised as a 'Scheduled Caste'.

18. The District and State Level Committees have unnecessarily gone into some irrelevant factors and on untenable grounds have rejected the plea of the petitioner without going into the legality of the subject. It is not the case of the District and State Level Committees that either conversion from other religions into Hindu-fold or reconversion to Hinduism is repugnant to law and opposed to the legal principles. It is also not their case that the manner in which the petitioner has got herself re-converted is either improper or illegal or against the norms of law. When either on facts or in law, the District and State Level Committees are not in a position to establish any irregularity or illegality in her reconversion, it should be clearly ruled that their appreciation of the proof placed on record is only perverse. This is a case which has to be positively looked into as done by the Honourable Division Bench of this Court in a straight forward manner in the judgment cited above. Applying the norms of law and the proposition held by the Division Bench judgment of this Court, the only conclusion that could be arrived at by this Court in the case of the petitioner is to allow the above writ petition granting the relief sought for by the petitioner setting aside the orders of both the District Level and State Level Committees and hence the following order:

In result,

- (i) the above writ petition succeeds and the same is allowed.
- (ii) The order passed by the first respondent in their proceedings No.6120/Athi Na.2/2000, dated 10.6.2002 thereby confirming the order of the second respondent in Proceedings NO.K.5/48878/99, dated 10.11.1999 is hereby quashed.

However, in the circumstances of the case, there shall be no order as to costs.

Consequently, W.P.M.P.Nos.34038 and 34039 of 2002 are closed.

26.09.2002.

Index: Yes

Internet: Yes

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